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In the Supreme Court of the United States

Nos. 4, 5 and 24
OCTOBER TERM, 1966

CASCADE NATURAL GAS CORPORATION, Appellant, vs. EL PASO NATURAL GAS COMPANY, et al, Appellees;	No. 4
STATE OF CALIFORNIA, Appellant, vs. EL PASO NATURAL GAS COMPANY, et al, Appellees;	No. 5
SOUTHERN CALIFORNIA EDISON COMPANY, Appellant, vs. EL PASO NATURAL GAS COMPANY, et al, Appellees.	No. 24

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

BRIEF FOR THE STATE OF OREGON AS AMICUS CURIAE

This brief is submitted pursuant to Rule 42 of the Rules of the Supreme Court of the United States, and is in support of the Appellants in each of the above listed causes.

I

INTEREST OF THE STATE OF OREGON

The State of Oregon has an interest in these proceedings both as parens patriae and in its proprietary capacity.

All of the natural gas consumed within the state is brought into the state by the El Paso Natural Gas Company (hereinafter referred to as "El Paso"). The facilities used in transporting that gas are subject to divestiture in this proceeding. Further, the gas here consumed is derived from sources of supply owned or controlled by El Paso which are herein subject to divestiture.

Continuity of natural gas service is "a matter of grave public concern in which the State, as the representative of the public, has an interest apart from that of the individuals affected. It is not merely a remote or ethical interest but one which is immediate and recognized by law." *Pennsylvania v. West Virginia* (1923) 262 U.S. 553, 67 L ed 1117, 43 S Ct 658, 32 ALR 300, *Georgia v. Pennsylvania R. Co.* (1945) 324 U.S. 439, 89 L ed 1051, 65 S Ct 716.

Of immediate concern to Oregon is that a divestiture be accomplished at the earliest possible date; that the entity which is to operate the divested facilities will be financially sound, ably managed, and have adequate gas reserves; that such entity to the extent now possible be restored to the same relative competitive position in which the Pacific Northwest Pipeline Corporation (hereinafter referred to as "PNPC") was situated prior to its merger into El Paso; and that the contractual relation-

ships existing between El Paso and PNPC prior to their merger be restored to the extent now possible.

II

ARGUMENT

A. Ratable Distribution of San Juan Basin Gas Reserves

In principle a decree of divestiture should be aimed at restoring an pre-merger status quo, and this divestiture should not be an exception to that principle.

Prior to the merger of El Paso and PNPC, El Paso was the sole out-of-state supplier of natural gas to the State of California, and PNPC was its only active competitor. Now there are three interstate gas transmission lines into California, and a case pending before the Federal Power Commission which may result in the construction of a fourth. There can, therefore, be no restoration of the pre-merger status quo with respect to competition for the California gas market. There *can* be restoration of that status quo as it related to El Paso and PNPC, however, if care is taken to put PNPC's successor in the *same relative position* held by PNPC in terms of gas reserves and inter-company contracts.

At the time of the unlawful merger El Paso and PNPC were in competition for reserves in the San Juan Basin of New Mexico and Southern Colorado. The reserves held by each company were located pirmarily in what is known as the Mesaverde or Blanco Mesaverde formation in the Basin, and to a lesser extent in the Pictured Cliffs formation and the Dakota formation. The substantial reserves in the third producing horizon,

the Dakota formation, were not then the subject of fierce competition to the same degree as were other reserves since they then were of relatively unknown magnitude. They were developed by El Paso as first the parent company, and later the surviving corporation. Significantly, *PNPC acquired no appreciable new reserves in any of the producing horizons of the San Juan Basin subsequent to the acquisition of its stock by El Paso, nor did El Paso acquire any such reserves on PNPC's account.*

It is clear that El Paso was freed by the merger of PNPC from competition by the latter, and was able to remove tremendous volumes of natural gas in the San Juan Basin from the scope of competition by the company which is to be divested.

The District Court decree makes no provisions for transfer of any portion of the San Juan Basin gas reserves acquired after the stock acquisition or after the merger. It was contended in the District Court by El Paso that the transfer of such assets would constitute a deprivation of property without due process of law. This is not a question however, of "deprivation" in the usual (constitutional) sense of the word. Rather it is a question of the division of assets of a single company on a rational, equitable basis. Such a juridical division *constitutes* due process.

In any event it should be recognized that upon the effectuation of the stock acquisition scheme, PNPC could no longer act on its own account except by leave of and through the offices of El Paso. Upon effectuation of the unlawful merger, PNPC ceased to exists and gas reserves

could not be acquired by it or for it, but could only be acquired by El Paso on its own account which included all of El Paso, not just the portion of El Paso exclusive of the merged assets of PNPC.

Both El Paso and the District Court tacitly recognized that fact in proposing and approving a divestiture plan which divided bond and debenture obligations proportionately rather than attempting to make a division of those liabilities based upon bonded indebtedness as it was at the time of the merger and upon post merger investments in particular areas or specific assets. If proportional distribution of funded debt is appropriate, so too is proportional distribution of gas reserves acquired subsequent to the stock acquisition and merger.

Appropriate distribution of gas reserves requires either that specific interests in gas production properties and properties held for future production be assigned to a new entity or that undivided interests be assigned. It is suggested that the first alternative presents a monumental task while the second is quite simple, requiring only identification of interests acquired after the stock acquisition and determination of the proper percentage to be assigned.

The foregoing argument is concerned with gas reserves in the San Juan Basin only. The basis for the limitation is simply that competition between El Paso and PNPC for reserves was generally limited to that area, and it was in that area only that both companies had pipeline facilities. After the merger, however, a new field was opened in the so-called Four Corners area, that

is, the area where Utah, Colorado, New Mexico and Arizona join. The field is known as the Aneth Field and is readily accessible to both pipeline systems. It is now connected only to the system El Paso seeks to retain, and *all* Aneth Field reserves controlled by El Paso would be *retained* by El Paso under the District Court decree. If competition for the California market by a new entity is significant, and this Court has alreday said that it is, then the Aneth Field reserves are as significant, if not more so, as the San Juan Reserves.

We cannot state with certainty that PNPC would have acquired Aneth reserves. It can be stated that the Aneth Field is the closest field to the California border, however, and it follows logically that *PNPC would have been an aggressive competitor* for Aneth reserves if it intended to breach the California market. It can further be stated as a mater of logic that PNPC would have been in the market for Aneth reserves in furtherance of the principle that pipeline companies invariably seek reserves located in close proximity to their pipeline facilities. Therefore, while we cannot state with *certainly* that PNPC would have acquired Aneth reserves, we can state that *in all probability* PNPC would have been a *most serious competitor* for such reserves.

Accordingly we submit that the Court should be concerned with a ratable division of both San Juan Basin and Aneth Field gas reserves acquired by El Paso after the unlawful merger. Since there is no record in the Court below with respect to Aneth reserves, we submit

that the Court should consider them as a part of the San Juan Basin reserves for purposes of divestiture.

As heretofore noted, the simplest method of achieving a ratable division of reserves is to require the assignment of undivided interests in reserves acquired subsequent to the merger. Such a method can be applied to Aneth reserves just as it can be to San Juan reserves, and it is therefore appropriate, we submit, to include Aneth reserves in the division and to apply the same percentage interest applied to San Juan reserves.

There remains the question of an appropriate percentage of newly acquired reserves to assign to a new entity. It is submitted that new reserves should be divided between the two companies on the basis of an allocation of 27.53% to the new company. Prior to the merger, PNPC held that percentage in San Juan reserves, Record page 1804, and that percentage must be assigned in order to preserve the pre-merger balance between the companies.

While it may be argued that the percentage relationship depended upon volumetric measurements rather than more accurate pressure decline data, the 27.53% figure is still the best available figure, since substantial revision in reserve estimates is in major part attributable to the revision of Basin Dakota reserves, the bulk of which were acquired after the violation of the Clayton Act. Hence the 27.53% figure is the best available in the record (Record, pages 778 and 779).

What reserves either of the companies would have acquired but for the stock acquisition and merger cannot

be positively determined, and the rationale of the percentage division is not based upon such a determination. It rests upon the proposition that to the extent now possible the pre-merger status quo should be restored, and that can only be accomplished by assigning an aliquot share of new reserves to the new entity.

In Oregon's memorandum and oral statement (Record, pages 2053 and 2129) to the District Court a different position was stated with respect to the Aneth Field. In that memorandum we suggested to the Court that proration be limited to the San Juan Basin. The reason for the change in position in this brief is that we are now aware that during the early stages of its development the Aneth Field was treated as part of the San Juan Basin by El Paso in the reconciliation of reserves for the Federal Power Commission. This appears on page 780 of the printed record. Since the two fields are in close proximity to each other and to the transmission lines of El Paso and the new company, it logically follows that Aneth reserves should be treated in the same manner as San Juan reserves. Accordingly the position of Oregon with respect to the Aneth Field has been modified from that stated in the District Court.

B. Restoration of the San Juan Basin Gathering Agreement

The PNPC held interests in gas reserves primarily in the eastern part of the San Juan Basin. El Paso's holdings were mainly in the western portion of the Basin. Each company held interests which could be utilized most economically through connection to the gathering system

of the other. Accordingly, the two companies entered into a contract whereby their respective wells could be attached to the gathering system of the other company (Record, 158).

In the event the volumes of gas gathered by one company for the other's account were greater than the quantities gathered by the other for its account, then it would receive reimbursement at the rate of 1.375 cents per thousand cubic feet so gathered.

The same contract appears in the District Court Decree, altered in two particulars. The first alteration simply constitutes provision for subsequently attached wells. This is quite reasonable, since the contract was eminently sensible in the first place and remains so with respect to later attachments. The second alteration was a more than threefold increase in the charge, that is, from 1.375 cents to 4.5 cents per thousand cubic feet.

It is submitted that the change in price is in direct violation of the principle that the pre-merger status quo should be restored. It is further submitted that the question of price is singularly within the jurisdiction of the Federal Power Commission under the Natural Gas Act and should not be altered by the Court.

Had the Federal Power Commission been presented with the question of price, it is to be anticipated that there would have been questions as to cost of facilities, depreciation, rate of return, and all of the various considerations that enter into a Federal Power Commission rate matter. The lower Court, however, made none of the requisite determinations. It could not have, for the

record is insufficient. They can not now be made without further evidence, nor, as noted, should they be, except by the Federal Power Commission.

Further, in order to determine the proper price, it must first be decided what *approach* to the question is appropriate, that is, should the price be based on fully allocated costs? Or should they be based on incremental costs? The record does not disclose which basis was used to arrive at either of the prices involved. Next, should there be a single price based on average costs throughout the Basin, or should there be two different prices, each company charging the other on the basis of its own costs? These questions are obviously questions which should be negotiated by independent arms length bargaining subject to the approval of the Federal Power Commission. The lower court, however, accepted on faith the recommendation of El Paso and made a blind determination without a record.

Again we submit, the proper resolution must be a restoration of the status quo ante. That can be accomplished without a detailed record. Thereafter, should El Paso deem itself in any way injured, it will be free to present its case to the proper forum, the Federal Power Commission, and if the record there warrants a price different than 1.375 cents, it will have its remedy, and have it *through the forum provided by law* for redress of such problems as this.

C. Revision of Canadian Gas Agreement

There are two agreements with respect to Canadian gas which are here involved. One is for the importation

of approximately 300,000 Mcf/d (Mcf/d is an abbreviation for thousand cubic feet per day) of gas, the other for the importation of approximately 150,000 Mcf/d. The former is hereafter referred to as "Sumas gas", the latter as "Kingsgate gas". Sumas gas is so referred to since it enters the United States near the town of Sumas, Washington. The Kingsgate gas enters the United States near the town of Kingsgate on the British Columbia-Idaho border.

There are certain aspects of the contract dealing with Sumas gas which we think might be changed to the advantage of the gas consuming public in the Pacific Northwest. The contract approved by the Court, however, is the same contract that was in effect prior to the merger. We therefore contend that, notwithstanding any features objectionable to us, it was proper for the District Court to have approved it. It was necessary that the Court approve the contract as submitted in order to maintain the pre-merger status quo.

The District Court departed from the status quo principle with respect to Kingsgate gas.

In order to put the matter of kingsgate gas into proper perspective, we quote from the order of the Federal Power Commission authorizing the importation of Canadian gas through Kingsgate (24 F.P.C. 134):

> "Various questions have been raised with regard to the general allocation of El Paso's incremental supply. The record does not clearly demonstrate what part, if any, of this supply will not be needed in El Paso's Northwest Division. The contract between Pacific Northwest and El Paso, made prior to the

merger of the two companies, and filed as an exhibit herein, provides that the sale to El Paso for the California market will be subject to curtailment or interruption to meet the needs of the Pacific Northwest market. * * *."

The Kingsgate gas, as is shown in the foregoing quotation, was acquired for service to California. It was to be transported through facilities of PNPC to the extent practicable. Since PNPC facilities were to be utilized, it was provided in the agreement between El Paso and PNPC that PNPC could use the gas when it was needed on the PNPC system.

The Agreement was of considerable value to both companies, to El Paso as a source of gas for a new California project, and to PNPC as a source of gas available when its system requirements exceeded its capability to deliver from existing sources.

It should be remembered that the pipeline serving the Pacific Northwest has an unusual design. Gas is put into the line at both ends and the center rather than at just one end as is the case with an ordinary line. For this reason the line narrows in diameter through Eastern Oregon and the State of Idaho. Gas delivered northwest of Idaho is generally from Canadian sources, and gas delivered in and south of Idaho is generally from the Rocky Mountain sources, principally the Big Piney field in Wyoming and the San Juan Basin in Colorado and New Mexico. The point where gas from the opposite directions meets in the line is not usually the same, but varies from day to day depending on gas requirements in various areas served. The variation is very great.

During cold weather the point tends to move northward as demands in the northwest increase, since the Canadian deliveries are limited. As the demand increases, more and more gas is required from the southern sources. The relatively narrow line through Idaho, however, limits the volume of gas which can be transmitted from the southern sources. It is at this point that the Kingsgate gas becomes of extreme importance. It can be, and now is, put into the system at a point near Spokane, Washington, and moves southwest to what is known as Station 14 or Plymouth Station on the Columbia River. At Station 14, which is on the main transmission line, the Kingsgate gas can be moved to the west or to the east. The Idaho bottleneck is thereby avoided.

During warm weather, however, the Canadian gas coming through Sumas is generally adequate to satisfy the demands upon the system in the Northwest, and can be supplemented with gas from southern sources when such gas is required. The Kingsgate gas is then surplus. Both the Sumas gas and the Kingsgate gas come into the system at a 90% load factor, however, and therefore must be utilized regardless of the weather, or, if not used, paid for anyway. This being the case, it is necessary to reduce the amount of gas put into the southern end of the system.

With the relatively rigid take requirements for Canadian gas, both Sumas and Kingsgate, the variation in takes from the south is compounded[1] out of proportion

[1] For purposes of illustration, assume that Canadian gas at 90% load factor supplies one half of cold weather system re-

(Continued Bottom Page 14)

and creates an inordinate supply problem. The agreement with respect to Kingsgate gas solved that problem in part. It permitted the Kingsgate gas to be consumed in the northern part of the system without a dislocation in the south, since southern sources could then be used for redelivery to El Paso rather than being shut down.

Due to the fact that load characteristics in California are different than those in the Northwest, and to the fact that El Paso's sources of supply are much larger and more varied than those to be divested, the impact of the Kingsgate gas on El Paso's system is negligible.

In short, the Kingsgate gas agreement was, and will be, of vital importance to a new operating company. It is no longer of any particular significance to El Paso since El Paso's plans to supply California markets with gas from the north via a Rocky Mountain transmission line have gone awry. The want of significance to El Paso is not, however, a proper basis upon which to destroy an agreement fairly entered into at a time when mutual benefits were contemplated for both El Paso and PNPC. To the contrary, the varying of the terms of the agreement is in direct contravention of the premise that the status quo ante should be restored to the extent now possible.

Finally, it should be noted that the Kingsgate gas

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quirements and that such requirements are twice the warm weather requirements. Canadian gas would then be adequate to supply all warm weather requirements, and no gas would be supplied from southern sources. In terms of return on investment, the adverse effect is apparent.

agreement is, like the San Juan gathering agreement, a matter uniquely within the province of the Federal Power Commission. If the agreement is to be changed, it should be done in the forum provided by Congress, not in the backwash of an anti-trust case.

D. **Westcoast Transmission Company Stock**

After PNPC was authorized to build its pipeline, it was faced with legal proceedings from the Westcoast Transmission Company, Ltd. (hereinafter called "WTC") which had also sought a certificate to render services in the Northwest. To avoid serious and costly delays and litigation, PNPC in conjunction with El Paso entered into a purchase agreement whereby it purchased natural gas from WTC (Record, 156). The gas so purchased is what has heretofore been referred to as "Sumas gas".

It was at this point in time that PNPC purchased a large block of WTC stock. While El Paso was involved in the gas purchase, it did not purchase the WTC stock and did not then have control of PNPC.

The District Court decree does not include the WTC sock as an asset to be divested to the new company, but rather permits El Paso to *sell* the stock and *retain* the proceeds. Once again the pre-merger status quo has been ignored.

The WTC stock is important to the new company in two respects: it is a ready source of operating capital, and it would allow the new company a voice in the management of its largest single supplier of natural gas (approximately 35% for 1964).

Possibly the lower Court thought it a violation of the antitrust laws for the new company to hold stock in one of its major suppliers. If so, there is certainly no finding to that effect, nor are we able to find any allegation to that effect in this proceeding. What is here involved is a charge that the merger of El Paso and PNPC violated the law, not that PNPC violated the law in acquiring stock in a Canadian company. It is manifestly inappropriate to impose a severe sanction against a *new* company where there was not a charge of wrongdoing against its predecessor. We find no plausible basis for the District Court allowing El Paso to thus retain its ill-got gain.

It should be pointed out that the WTC stock is not utility operating property so does not come within the purview of the Federal Power Commission. A final determination as to the disposition of that stock should therefore be made by the Court. Once again we urge the Court to act in accordance with the status quo ante principle, by returning the WTC stock to the new company.

E. Northwest Production Company

The decree of the District Court provides for the transfer of assets to a new company known as the Northwest *Pipeline* Corporation. It is now a corporation without assets, and for that reason is not subject to Federal Power Commission jurisdiction except with respect to its current application for a certificate of convenience and necessity.

The Northwest *Production* Company is an El Paso subsidiary. At the time of the PNPC merger, PNPC held about sixty percent of its stock. El Paso has through the merger, and subsequent thereto by purchase, acquired most of the outstanding shares in the Northwest *Production* Company.

It is now proposed that the Northwest Production Company be merged with the Northwest Pipeline Company. Since the latter is not yet subject to the Natural Gas Act, this can be accomplished without authority from the Federal Power Commission. PNPC could not have merged with the production company without Federal Power Commission approval, since it was subject to the Natural Gas Act.

From the consumer standpoint the merger would be bad for the reason that the production company is losing money. A merger would permit the losses to be passed on to the public (as the profits never were when the company was in a favorable earnings position). From the regulatory standpoint the merger is bad because it would be accomplished without the review which would be entailed but for these proceedings, that is, these proceedings would be a tool for the circumvention of the Natural Gas Act. From the standpoint of his case, the merger is bad because it permits El Paso to rid itself of a dubious investment to the public detriment in violation of the principle that divestiture should aim at restoration of the status quo.

It is submitted that the merger of the Northwest Production Company into a new company should not be

allowed during the pendency of these and subsequent Federal Power Commission certification proceedings.

F. PNPC Tax Losses

At the time of the merger of El Paso and PNPC, PNPC had accumulated tax losses of $53,820,698.99 (Record page 687). The District Court makes no provision for the restoration of the benefits which El Paso derived through utilization of these losses by El Paso. Those benefits, based on a 52% tax rate, amount to nearly $28 million.

It is submitted that El Paso derived those benefits through violation of the antitrust laws; and that to be effective, a divestiture decree should make provision for divestiture not only of tangible assets but of monetary benefits as well. In short, there should be *total* divestiture, not merely selective divestiture.

G. Independence of Northwest Pipeline Corporation

Bearing in mind that the purpose of this Court in ordering divestiture was to recreate a company capable of competing with El Paso for the California gas market, we think it appropriate to examine the status of the Northwest Pipeline Corporation.

That Corporation was created by El Paso. It's management was selected by El Paso. Under the District Court decree it will have no assets until it is granted a certificate of convenience and necessity by the Federal Power Commission. Thereafter El Paso will retain the stock of the Northwest Pipeline Corporation for a period of up to three years. During the entire period, Northwest

Pipeline Corporation will be subect to the control of El Paso. Whether some vestige of control will remain thereafter by reason of El Paso's having installed top management is problematical.

Certainly it is clear, however, that the Northwest Pipeline Corporation will be at a decided disadvantage in certificate proceedings before the Federal Power Commission, since it is without assets and must therefore depend entirely upon El Paso to prepare or pay for the preparation of its case.

It is submitted that the Northwest Pipeline Corporation is not independent of El Paso and cannot be for some years to come.

True independence can be accomplished by a prompt sale to an existing independent company.

We should note here that the independence of the succeeding company is a function of competition. Divestiture will not create competition in the Northwest. Our concern with competition is primarily legalistic, since it will have no immediate impact on us. Our interest in this regard is more with respect to the question of promptness—divestiture without delay. Accordingly we urge the Court to make provision for a complete divestiture at the earliest possible date whether the assets to be divested are to be transferred to the Northwest Pipeline Corporation or some other entiy.

H. **Pinedale reserves**

The El Paso divestiture plan adopted by the lower court contemplated turning over all reserves north of

the San Juan Basin to a new entity with the exception of reserves in the Pinedale area in Wyoming. While these reserves are of questionable value and are not presently being produced, it is nevertheless appropriate that they be divested, since the plan in general contemplates that a new entity should have all properties in the Rocky Mountain area traversed by the transmission line to be divested.

If the concept is *not* proper, then it is appropriate to closely examine *all* reserves, including the immense new reserves acquired by El Paso in the Permian Basin. We accept the concept proposed with respect to Rocky Mountain reserves. Having accepted it as valid, there is no valid reason for making exceptions to it. The Pinedale properties should be divested.

III

SUMMARY OF ARGUMENT

A. Natural gas reserves acquired by El Paso after the PNPC merger in areas of pre-merger competition should be divided between El Paso and a new company on a percentage basis, with the new company receiving the same percentage share of new gas that it held in relation to total reserves in the same areas prior to the merger.

B. The pre-merger contract between El Paso and PNPC providing for the gathering of gas by each company by the other should not contain a three-fold increase in the charges for such gathering but should be reinstated at the pre-merger price.

C. The Federal Power Commission approved basis for utilization of Canadian gas imported at a point near

Kingsgate, British Columbia should be reinstated without the changes provided for in the lower court decree.

D. The shares of stock of the Westcoast Transmission Company, Ltd., which El Paso acquired from PNPC should be returned to PNPC's successor and not sold by El Paso with El Paso retaining the proceeds.

E. The Northwest Production Company should not be merged with the new company without approval of the Federal Power Commission.

F. The benefit of the tax losses incurred by PNPC should not be retained by El Paso, but should be divested.

G. The company to which divested assets are to be transferred should be independent of El Paso's control.

H. The Pinedale (Wyoming) properties should be divested, not retained by El Paso in violation of the El Paso proposed and court adopted concept that all Rocky Mountain reserves north of the San Juan Basin should be divested.

IV

CONCLUSION

Natural gas consumption within the State of Oregon during 1965 was approximately 682 million therms, which is equivalent to approximately six four billion cubic feet. All of this gas was purchased from El Paso.

As is apparent from the extent of gas consumption, continuity of service at reasonable rates is of great importance to the economy of the state and its inhabitants as well as to the comfort of a large segment of its population.

The interests of Oregon require that there be established an ably managed company capable of rendering reasonable service within the state. In order to accomplish that end we deem it to be imperative that the company succeeding to the interess of El Pasto in the Northwest be not only independent of El Paso, but also that it be put in the same position relative to El Paso as PNPC was in prior to the merger of El Paso and PNPC.

To this end we submit that there should be a proration of natural gas reserves in the San Juan Basin; a restoration and extension of the pre-merger contract affecting gathering charges in the San Juan Basin; a restoration of the contract with respect to gas imported through Kingsgate, British Columbia; transfer to the succeeding company of the Westcoast Transmission Company, Ltd., stock held by PNPC prior to the merger; restoration and preservation of the pre-merger status of the Northwest Production Company; a transfer to the succeeding company of the benefits derived by El Paso from the tax losses of PNPC; and divestiture of the Wyoming properties known as Pinedale.

Of very substantial significance is the question of the status of the new company, that is, satellite or independent. The District Court decree provides for the establishment of what we deem to be a satellite and not an independent company. In our view there can be no true independence if the new company is to be created and controlled by El Paso. Certainly the Northwest Pipeline Corporation is the creation of El Paso, and under the terms of the District Court decree it is also subject to

the control of El Paso and will so remain for a considerable period of time. In order that there be immediate independence, we deem it appropriate that the divestiture be accomplished through transfer of assets to an entity *not* created and controlled by El Paso.

In this latter connection it should be noted that the interests of the State of Oregon are not immediately affected in terms of competition. Oregon's position is simply that an independent company must be created in order that the mandate of this Court may be satisfied, that is, that there be created a viable company capable of competing with El Paso for service to the growing California market. In short, independence is a legal requisite of this case. It cannot therefore be ignored.

Oregon submitted a form of decree to the District Court which encompasses what we deem to be an appropriate divestiture. It appears in the record on appeal at pages 2059 through 2066.

In order that this matter may be finally and promptly resolved, it is submitted that this Court should enter an order adopting the form of decree submitted by Oregon to the District Court, and thereafter refer the matter to a master for implementation.

Respectfully submitted,

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